

On August 14, 2009 appellant, then a 72-year-old supply officer, filed an occupational disease claim (Form CA-2) alleging that he sustained a right wrist injury as a result of his federal employment. On the claim form he stated that he had been working until July 15, 2009, when he underwent a right wrist fusion surgery. Appellant stated on the claim form that he had an initial

injury at work in 1998, with no claim form submitted and a second employment incident on April 26, 2002.

Appellant submitted medical evidence in support of his claim. An employing establishment health unit note dated July 17, 1998 indicated that he reported a stiff right wrist, which he had since 1995. In a report dated May 18, 2009, Dr. Ian Lang, an internist, provided a history of chronic right wrist pain after a fall in wet conditions in 1998.

By letter dated September 22, 2009, the Office requested that appellant submit additional factual and medical evidence. In a decision dated October 26, 2009, it denied the claim for compensation. The Office found the factual and medical evidence was insufficient to establish the claim.

On October 27, 2009 the Office received additional evidence. Appellant submitted a traumatic injury claim form (CA-1) with a signature, dated May 17, 2002. According to him, the injury occurred on April 26, 2002 while moving boxes. Appellant stated that the strap on the box fell off and hit him, and he tried to catch the box to protect himself and injured his right wrist and shoulder. In a treatment note dated May 17, 2002, from the employing establishment health unit, a medical officer reported appellant having an injury on April 26, 2002 when a box fell and hit him on the wrist and shoulder.

In a report dated October 1, 2009, Dr. Michal Lenihan, an orthopedic surgeon, provided a history of slip and fall in 1998 with a fracture of the right wrist. He provided results on examination and stated that the 1998 injury led to an instability pattern in the wrist and subsequent collapse of the intercarpal and radiocarpal joints. Dr. Lenihan opined that this produced post-traumatic arthritis and the need for wrist fusion surgery. On November 16, 2009 appellant requested reconsideration of his claim.

By decision dated January 26, 2010, the Office found the reconsideration request was insufficient to warrant merit review of the claim. It found the medical evidence was not relevant as appellant had not established the factual aspect of the claim. As to the Form CA-1, the Office stated that they did not have a claim number associated with this injury.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.²

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.³

ANALYSIS -- ISSUE 1

Appellant filed an occupational disease claim and referred to an employment incident in 1998 and a second incident in 2002. He did not provide a detailed factual statement regarding these incidents. The claim form refers briefly to incidents involving his wrist, without providing additional explanation. It is appellant's burden to submit sufficient evidence to establish that the incidents occurred as alleged. There must be a detailed description of the employment factors he believes caused or contributed to the claimed condition.⁴ Appellant did not submit a detailed factual statement in this case. In addition, once the employment factors are identified and established, there must be medical evidence on causal relationship between a diagnosed condition and the work factors.⁵

In this case, appellant did not respond to the September 22, 2009 request for additional factual and medical evidence. The Board finds that he did not meet his burden of proof in this case.

On appeal, appellant states that his right wrist condition was the direct result of two specific incidents. As noted, he has the burden of proof to submit the factual and medical evidence to establish his claim and he did not meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁶ the Office's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."⁷ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁸

³ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁴ *O.W.*, 61 ECAB ____ (Docket No. 09-2110, issued April 22, 2010).

⁵ *See Donald W. Wenzel*, 56 ECAB 390 (2005).

⁶ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application)."

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ANALYSIS -- ISSUE 2

As noted above, the Office properly determined that appellant had not submitted sufficient factual evidence to establish his claim for compensation. Appellant had referred to a 1998 incident and a 2002 incident without providing further detail. On reconsideration, however, he submitted additional factual evidence regarding an April 26, 2002 incident. He submitted a Form CA-1 that described an incident on April 26, 2002 involving the moving of boxes. In addition, appellant submitted an employing establishment treatment note indicating that on May 17, 2002 he provided a history of an April 26, 2002 incident.

The Office stated that it did not have a claim form associated with a 2002 injury, but that is not the issue. Appellant filed an occupational disease claim and alleged that his condition was related to 1998 and 2002 employment incidents. The claim was denied as the factual evidence was insufficient with respect to the alleged incidents. On reconsideration, appellant submitted new and relevant evidence regarding the 2002 incident. The CA-1 form provided details regarding an April 26, 2002 employment incident that were not previously of record. In addition, the employing establishment health unit note described an April 26, 2002 incident and is also new and relevant factual evidence regarding the occurrence of an April 26, 2002 incident.

The Board accordingly finds that appellant has submitted new and relevant evidence not previously considered by the Office. Appellant has met the standard of 5 U.S.C. § 606(b)(2)(iii) and is therefore entitled to a merit review. The case will be remanded for a merit decision.

CONCLUSION

The Board finds appellant did not meet his burden of proof to establish an employment-related wrist condition. On reconsideration appellant submitted new and relevant evidence and therefore is entitled to a merit review of his claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 26, 2009 is affirmed. The decision dated January 26, 2010 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 21, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board